



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

FINAL ORDER P-1467

Appeal P_9600438

Ministry of Natural Resources



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

This is my Final Order disposing of the outstanding issues as referred to in Interim Order P-1441, dated August 11, 1997.

In Interim Order P-1441, I ordered the Ministry of Natural Resources (the Ministry) to provide me with representations respecting the exercise of discretion under section 18(1)(e) of the Freedom of Information and Protection of Privacy Act (the Act) with respect to Record 2-15. I also invited all of the parties to provide me with representations respecting the application of section 23 to the records which I found to qualify for exemption under sections 13, 15 and 18.

Following the issuance of the Interim Order, the Ministry disclosed Record 2-15 and, therefore, the Ministry's application of section 18(1)(e) to this record is no longer at issue.

Representations respecting the application of section 23 were received from the Ministry only. I have considered the representations previously submitted by the appellant in making this order.

Section 23 of the Act states as follows:

An exemption from disclosure of a record under sections **13, 15, 17, 18, 20** and 21 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

Section 23 imposes two requirements, both of which must be satisfied in order to invoke the application of the so-called public interest override: (1) there must be a compelling public interest in disclosure; and (2) this compelling public interest must clearly outweigh the purpose of the exemption.

The appellant submits that:

There can be nothing more compelling than the protection of constitutionally entrenched aboriginal rights. If those rights are violated by breaches of undertakings given in the course of consultation required by the federal Department of Fisheries and Oceans in the directive of the Supreme Court of Canada in Sparrow then it is most assuredly a matter of great public interest and indeed a matter of urgent necessity that the public be informed.

The Ministry, on the other hand, submits that the appellant is conducting research on behalf of a First Nation into Aboriginal Fishing rights with a view to supporting the First Nation's claim relating to such rights. It argues that the appellant is seeking the information in order to advance private interests, specifically those of the First Nation, rather than for the benefit of the public as a whole.

I disagree with the Ministry as, in my view, the determination of aboriginal fishing rights is a matter of public rather than private interest, as evidenced in the significant political debate in this area.

In Order P_984, I described the criteria for finding a “compelling public interest in disclosure”, as follows:

In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

The Ministry submits that “compelling public interest” has been defined in previous orders issued by this office. First, the Ministry submits that a record must deal with a subject which has received comprehensive media coverage to demonstrate that it has aroused strong interest among members of the general public, rather than a select portion or portions of the public. While media coverage is a factor worthy of consideration as part of the determination of whether a matter is in the public interest, it is certainly not determinative.

The Ministry submits that, alternatively, in order to make a finding of “compelling public interest”, the record must call into question the integrity of the institution in that the actions or alleged actions of the institution are contrary to or not contemplated by legislation, or otherwise strongly deviate from normal business or administrative practices expected of a public institution. On the contrary, in my view whether the record indicates the Ministry’s actions were appropriate is not the issue — it is enough that serious questions have been raised about the Ministry’s actions.

Finally, the Ministry submits that if the record is not within either of the two categories described above, a compelling public interest will apply only where the record deals with issues relating to question concerning public safety or health. I disagree. Public interest, in my view, is a fluid concept, constantly responding to new events and changing circumstances. I find that it is not so easily categorized.

In my view, however, disclosure of the information contained in the records at this stage would not result in a more informed citizenry, or enhance the public’s ability to express public opinion or make political choices. Further, should the aboriginal communities affected by the agreements feel that their constitutional rights were infringed at the conclusion of the negotiations, the proper recourse is through the courts, which have their own disclosure rules to ensure fairness in the process. Accordingly, I find there is no compelling public interest in disclosure of these records.

ORDER:

I uphold the Ministry’s decision.

Original signed by: _____

October 15, 1997

Holly Big Canoe
Inquiry Officer